

AMENDED IN SENATE JUNE 23, 2010
AMENDED IN SENATE JUNE 9, 2010
AMENDED IN SENATE APRIL 6, 2010
AMENDED IN SENATE FEBRUARY 18, 2010
AMENDED IN SENATE JUNE 29, 2009
AMENDED IN SENATE JUNE 15, 2009
AMENDED IN ASSEMBLY MAY 6, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1443

Introduced by Assembly Member Huffman
(Coauthors: Assembly Members Adams, Jeffries, Portantino,
Saldana, and Smyth)
(Coauthor: Senator Price)

February 27, 2009

An act to amend ~~Sections 23217, 23540, 23546, 23550, 23550.5, 23560, and 23566 of, Section 23217 of,~~ and to add Section 23595 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1443, as amended, Huffman. Vehicles: driving under the influence: repeat offenders.

(1) Existing law requires, if a person is convicted of a specified driving-under-the-influence (DUI) offense and the offense occurred within 10 years of 2, or 3 or more prior specified DUI offenses that resulted in a conviction, that the person be punished by enhanced

penalties, and that the person's privilege to operate a motor vehicle be revoked by the Department of Motor Vehicles for a period of 2, 3, 4, or 5 years, as applicable.

~~This bill would delete the 10-year limitation.~~

This bill would ~~authorize~~ *require* the department to permanently revoke the driver's license of a person who was previously convicted of 3 or more specified DUI offenses.

The bill would ~~require that~~ *prohibit* a person whose driver's license is permanently revoked by the department under these provisions ~~forfeit his or her vehicle to the state or forfeit any interest in the vehicle, if specified provisions apply and would prohibit that person from registering or owning a vehicle in this state. The bill would prohibit a person in this state from selling, leasing, or lending a vehicle to that person; from registering a vehicle in this state.~~ Because a person who violates this prohibition is guilty of a crime, this bill would create a new crime, thereby imposing a state-mandated local program.

The bill would also authorize a person who had only 3 convictions of a DUI offense, and whose driver's license was permanently revoked ~~by the~~ *by the* department to petition to the court for the reinstatement of his or her privilege to drive after a period of 5 years from the date of his or her last conviction if the person successfully passes a written test and driving test for the license classification and successfully completes a specified alcohol treatment program. The bill would require the court to consider 5 specified factors in determining whether to order the department to reinstate the person's license.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known, and may be cited, as
- 2 "Melody's Law."
- 3 SEC. 2. Section 23217 of the Vehicle Code is amended to read:
- 4 23217. The Legislature finds and declares that some repeat
- 5 offenders of the prohibition against driving under the influence of

1 alcohol or drugs, when they are addicted or when they have too
2 much alcohol in their systems, may be escaping the intent of the
3 Legislature to punish the offender with progressively greater
4 severity if the offense is repeated one or more times. This situation
5 may occur when a conviction for a subsequent offense occurs
6 before a conviction is obtained on an earlier offense.

7 The Legislature further finds and declares that the timing of
8 court proceedings should not permit a person to avoid aggravated
9 mandatory minimum penalties for multiple separate offenses. It
10 is the intent of the Legislature to provide that a person be subject
11 to enhanced mandatory minimum penalties for multiple offenses,
12 regardless of when the convictions for those offenses were
13 obtained.

14 Nothing in this section requires consideration of judgment of
15 conviction in a separate proceeding that is entered after the
16 judgment in the present proceeding, except as it relates to violation
17 of probation.

18 Nothing in this section or the amendments to Section 23540,
19 23546, 23550, 23560, 23566, 23622, or 23640 made by Chapter
20 1205 of the Statutes of 1984 affects the penalty for a violation of
21 Section 23152 or 23153 occurring prior to January 1, 1985.

22 SEC. 3. Section 23540 of the Vehicle Code is amended to read:

23 23540. (a) ~~If a person is convicted of a violation of Section~~
24 ~~23152 and the person was previously convicted of a separate~~
25 ~~violation of Section 23103, as specified in Section 23103.5, 23152,~~
26 ~~or 23153, that resulted in a conviction, that person shall be~~
27 ~~punished by imprisonment in the county jail for not less than 90~~
28 ~~days nor more than one year and by a fine of not less than three~~
29 ~~hundred ninety dollars (\$390) nor more than one thousand dollars~~
30 ~~(\$1,000). The person's privilege to operate a motor vehicle shall~~
31 ~~be suspended by the department pursuant to paragraph (3) of~~
32 ~~subdivision (a) of Section 13352. The court shall require the person~~
33 ~~to surrender the driver's license to the court in accordance with~~
34 ~~Section 13550.~~

35 (b) ~~Whenever, when considering the circumstances taken as a~~
36 ~~whole, the court determines that the person punished under this~~
37 ~~section would present a traffic safety or public safety risk if~~
38 ~~authorized to operate a motor vehicle during the period of~~
39 ~~suspension imposed under paragraph (3) of subdivision (a) of~~

1 Section 13352, the court may disallow the issuance of a restricted
2 driver's license required under Section 13352.5.

3 SEC. 4. Section 23546 of the Vehicle Code is amended to read:

4 23546. (a) If a person is convicted of a violation of Section
5 23152 and the person was previously convicted of two separate
6 violations of Section 23103, as specified in Section 23103.5, 23152,
7 or 23153, or any combination thereof, that resulted in convictions,
8 that person shall be punished by imprisonment in the county jail
9 for not less than 120 days nor more than one year and by a fine of
10 not less than three hundred ninety dollars (\$390) nor more than
11 one thousand dollars (\$1,000). The person's privilege to operate
12 a motor vehicle shall be revoked by the Department of Motor
13 Vehicles as required in paragraph (5) of subdivision (a) of Section
14 13352. The court shall require the person to surrender his or her
15 driver's license to the court in accordance with Section 13550.

16 (b) A person convicted of a violation of Section 23152
17 punishable under this section shall be designated as a habitual
18 traffic offender for a period of three years, subsequent to the
19 conviction. The person shall be advised of this designation pursuant
20 to subdivision (b) of Section 13350.

21 SEC. 5. Section 23550 of the Vehicle Code is amended to read:

22 23550. (a) If a person is convicted of a violation of Section
23 23152 and the person was previously convicted of three or more
24 separate violations of Section 23103, as specified in Section
25 23103.5, 23152, or 23153, or any combination thereof, that resulted
26 in convictions, that person shall be punished by imprisonment in
27 the state prison, or in a county jail for not less than 180 days nor
28 more than one year, and by a fine of not less than three hundred
29 ninety dollars (\$390) nor more than one thousand dollars (\$1,000).
30 The person's privilege to operate a motor vehicle shall be revoked
31 by the Department of Motor Vehicles pursuant to paragraph (9)
32 of subdivision (a) of Section 13352. The court shall require the
33 person to surrender the driver's license to the court in accordance
34 with Section 13550.

35 (b) A person convicted of a violation of Section 23152
36 punishable under this section shall be designated as a habitual
37 traffic offender for a period of three years, subsequent to the
38 conviction. The person shall be advised of this designation pursuant
39 to subdivision (b) of Section 13350.

1 ~~SEC. 6. Section 23550.5 of the Vehicle Code is amended to~~
2 ~~read:~~

3 ~~23550.5. (a) A person is guilty of a public offense, punishable~~
4 ~~by imprisonment in the state prison or confinement in a county~~
5 ~~jail for not more than one year and by a fine of not less than three~~
6 ~~hundred ninety dollars (\$390) nor more than one thousand dollars~~
7 ~~(\$1,000) if that person is convicted of a violation of Section 23152~~
8 ~~or 23153, and the person was previously convicted of any of the~~
9 ~~following:~~

10 ~~(1) A prior violation of Section 23152 that was punished as a~~
11 ~~felony under Section 23550 or this section, or both, or under former~~
12 ~~Section 23175 or former Section 23175.5, or both.~~

13 ~~(2) A prior violation of Section 23153 that was punished as a~~
14 ~~felony.~~

15 ~~(3) A prior violation of paragraph (1) of subdivision (c) of~~
16 ~~Section 192 of the Penal Code that was punished as a felony.~~

17 ~~(b) Each person who, having previously been convicted of a~~
18 ~~violation of subdivision (a) of Section 191.5 of the Penal Code, a~~
19 ~~felony violation of subdivision (b) of Section 191.5, or a violation~~
20 ~~of subdivision (a) of Section 192.5 of the Penal Code, is~~
21 ~~subsequently convicted of a violation of Section 23152 or 23153~~
22 ~~is guilty of a public offense punishable by imprisonment in the~~
23 ~~state prison or confinement in a county jail for not more than one~~
24 ~~year and by a fine of not less than three hundred ninety dollars~~
25 ~~(\$390) nor more than one thousand dollars (\$1,000).~~

26 ~~(c) The privilege to operate a motor vehicle of a person~~
27 ~~convicted of a violation that is punishable under subdivision (a)~~
28 ~~or (b) shall be revoked by the department under paragraph (9) of~~
29 ~~subdivision (a) of Section 13352, unless paragraph (8) of~~
30 ~~subdivision (a) of Section 13352 is also applicable, in which case~~
31 ~~the privilege shall be revoked under that provision. The court shall~~
32 ~~require the person to surrender the driver's license to the court in~~
33 ~~accordance with Section 13550.~~

34 ~~(d) A person convicted of a violation of Section 23152 or 23153~~
35 ~~that is punishable under this section shall be designated as a~~
36 ~~habitual traffic offender for a period of three years, subsequent to~~
37 ~~the conviction. The person shall be advised of this designation~~
38 ~~under subdivision (b) of Section 13350.~~

39 ~~SEC. 7. Section 23560 of the Vehicle Code is amended to read:~~

1 23560. If a person is convicted of a violation of Section 23153
2 and the person was previously convicted of a separate violation
3 of Section 23103, as specified in Section 23103.5, 23152, or 23153
4 that resulted in a conviction, that person shall be punished by
5 imprisonment in the state prison, or in a county jail for not less
6 than 120 days nor more than one year, and by a fine of not less
7 than three hundred ninety dollars (\$390) nor more than five
8 thousand dollars (\$5,000). The person's privilege to operate a
9 motor vehicle shall be revoked by the Department of Motor
10 Vehicles pursuant to paragraph (4) of subdivision (a) of Section
11 13352. The court shall require the person to surrender the driver's
12 license to the court in accordance with Section 13550.

13 SEC. 8. Section 23566 of the Vehicle Code is amended to read:

14 23566. (a) If a person is convicted of a violation of Section
15 23153 and the person was previously convicted of two or more
16 separate violations of Section 23103, as specified in Section
17 23103.5, 23152, or 23153, or any combination of these violations,
18 that resulted in convictions, that person shall be punished by
19 imprisonment in the state prison for a term of two, three, or four
20 years and by a fine of not less than one thousand fifteen dollars
21 (\$1,015) nor more than five thousand dollars (\$5,000). The person's
22 privilege to operate a motor vehicle shall be revoked by the
23 Department of Motor Vehicles pursuant to paragraph (8) of
24 subdivision (a) of Section 13352. The court shall require the person
25 to surrender the driver's license to the court in accordance with
26 Section 13550.

27 (b) If a person is convicted of a violation of Section 23153, and
28 the act or neglect proximately causes great bodily injury, as defined
29 in Section 12022.7 of the Penal Code, to any person other than the
30 driver, and the person was previously convicted of two or more
31 separate violations of Section 23103, as specified in Section
32 23103.5, 23152, or 23153, or any combination of these violations,
33 that resulted in convictions, that person shall be punished by
34 imprisonment in the state prison for a term of two, three, or four
35 years and by a fine of not less than one thousand fifteen dollars
36 (\$1,015) nor more than five thousand dollars (\$5,000). The person's
37 privilege to operate a motor vehicle shall be revoked by the
38 Department of Motor Vehicles pursuant to paragraph (8) of
39 subdivision (a) of Section 13352. The court shall require the person

1 to surrender the driver's license to the court in accordance with
2 Section 13550.

3 (e) If a person is convicted under subdivision (b), and the person
4 was previously convicted of four or more separate violations of
5 Section 23103, as specified in Section 23103.5, 23152, or 23153,
6 or any combination of these violations, that resulted in convictions,
7 that person shall, in addition and consecutive to the sentences
8 imposed under subdivision (b), be punished by an additional term
9 of imprisonment in the state prison for three years.

10 The enhancement allegation provided in this subdivision shall
11 be pleaded and proved as provided by law.

12 (d) A person convicted of Section 23153 punishable under this
13 section shall be designated as a habitual traffic offender for a period
14 of three years, subsequent to the conviction. The person shall be
15 advised of this designation pursuant to subdivision (b) of Section
16 13350.

17 (e) A person confined in state prison under this section shall be
18 ordered by the court to participate in an alcohol or drug program,
19 or both, that is available at the prison during the person's
20 confinement. Completion of an alcohol or drug program under this
21 section does not meet the program completion requirement of
22 paragraph (8) of subdivision (a) of Section 13352, unless the drug
23 or alcohol program is licensed under Section 11836 of the Health
24 and Safety Code, or is a program specified in Section 8001 of the
25 Penal Code.

26 SEC. 9.

27 SEC. 3. Section 23595 is added to the Vehicle Code, to read:

28 23595. (a) Notwithstanding Sections 13202.5, 13203, and
29 13352, upon receipt of an abstract of the record of a court showing
30 a person has been convicted of a violation of Section 23152 or
31 23153, if the department determines that it is the person's third or
32 more conviction for a violation of Section 23152 or 23153, the
33 department shall permanently revoke the person's license.

34 (b) Except as provided in subdivision (4), a person whose license
35 was permanently revoked by the department pursuant to this section
36 may petition the court for the reinstatement of his or her driving
37 privilege after a period of five years from the date of his or her
38 last conviction if he or she does all of the following:

39 (1) Successfully passes the written test for the license
40 classification.

(2) Successfully passes the driving test for the license classification.

(3) Successfully completes an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as described in subdivision (b) of Section 23568 or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code.

(c) When determining whether to order the department to reinstate the person's license, the court shall consider all of the following:

(1) The degree of bodily injury caused by the person's previous violations that resulted in a conviction.

(2) The period of time that has elapsed since the person's previous convictions.

(3) The person's blood-alcohol level at the time of each violation.

(4) The person's past and future participation in an alcohol treatment program in an effort to rehabilitate himself or herself.

(5) The person's overall risk to traffic or public safety.

(d) Upon receipt of a duly certified abstract of the record of the court showing that the court has ordered reinstatement of a driver's license pursuant to this section, the department shall reinstate the person's driver's license.

(e) A person whose driver's license has been permanently revoked pursuant to this section shall not be eligible for a restricted driver's license under this code.

(f) A person with four or more convictions of a violation of Section 23152 or 23153 shall not be eligible to petition the court for the reinstatement of his or her driving privileges pursuant to subdivision (b).

~~(g) A person whose driver's license has been permanently revoked by the department under this section shall forfeit his or her vehicle to the state if he or she is the registered owner of the vehicle and holds title to the vehicle.~~

~~(h) If the person is the coregistrant or cotitle owner of the vehicle, he or she shall forfeit all of his or her interest in the vehicle, and the vehicle shall be released to the coregistrant or the~~

1 cotitle owner, if the vehicle is reregistered in the other person's
2 name.

3 (i) If there is no coregistrant or cotitle owner, then the vehicle
4 shall be released to the person or entity that holds legal title
5 pursuant to subdivision (b) of Section 23592.

6 (j) A person whose driver's license is permanently revoked by
7 the department under this section shall be prohibited from
8 registering or owning a vehicle in this state.

9 (k) A person in this state shall not sell, lease, or lend a vehicle
10 to a person whose license has been permanently revoked under
11 this section.

12 (g) A person whose driver's license is permanently revoked by
13 the department pursuant this section shall be prohibited from
14 registering a vehicle in this state.

15 ~~SEC. 10.~~

16 *SEC. 4.* No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.